

EXHIBIT C

Proceedings

1 evidence. That is the purpose of summations.

2 If you find a particular attorney's analysis
3 to be correct and accurate, and if you find that the
4 inferences and conclusions which you are asked to
5 draw from the evidence are logical and sensible, then
6 you may adopt such analysis, inferences and/or
7 conclusions either in whole or in part.

8 On the other hand, if you find that either
9 of counsels' analysis of the facts or inferences or
10 conclusions which you have been asked to draw
11 therefrom are illogical or not warranted by the
12 evidence, then you may disregard the same and draw
13 your own conclusions from the evidence which you find
14 to be credible.

15 Bear in mind that nothing either counsel may
16 say in their summations is evidence in this case.
17 Nor is anything that I say to you in my charge to you
18 evidence. You have heard the evidence. You, and you
19 alone, are the sole and exclusive judges of the facts
20 in this case.

21 Mr. Brewington will now begin his summation.

22 MR. BREWINGTON: May it please the Court,
23 Mr. Schalk, ladies and gentlemen of the jury, it
24 seems like it's been three, four days since we have
25 been together. It's because it has been. It has

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1 been that long.

2 Let me thank you initially for showing your
3 vigilance, showing your dedication to the task at
4 hand, that being sitting in judgment of this young
5 man.

6 I can honestly say I haven't slept a lot,
7 and I say that because there is a certain level of
8 tumult going on within me about some of the evidence
9 that we have heard in this case.

10 This case is important. While we have had
11 times of levity, sometimes, we have some laughs
12 during this case, at no time did the importance of
13 this case wane, neither did your ability to pay
14 attention to what was going on here, and I thank you
15 for that on behalf of Mr. Galloway and I thank you
16 for that.

17 Nothing could be more important or more
18 serious than when one of our neighbors is
19 misidentified and falsely accused of serious charges
20 and forced to face the fight of his life and the
21 possible loss of a young adulthood for something he
22 did not do. That's one of the reasons why I lost
23 sleep these past few days.

24 He's accused of being in a place where he
25 was not and doing something to someone he did not

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1 know and had never met before, and we are here now on
2 this 3rd day of March, snow and all, to see justice
3 done.

4 In his opening, Mr. Schalk said that the man
5 who shot Jorge Anyosa was not wearing a mask. He
6 forgot to also mention that he wasn't wearing a
7 baseball cap either. He was not sitting on phone
8 books. The man that shot Mr. Anyosa was situated
9 with hair my length, not cornrows, not braids, my
10 length. You heard witness after witness saying that.

11 The person that shot Mr. Anyosa was speaking
12 with an accent. The man that shot Mr. Anyosa was
13 5-foot 10, 5-foot 11, not 5-foot 5; was driving at
14 night; and was not missing a front tooth and didn't
15 have on any glasses. So many things, but yet they
16 press on.

17 Mr. Schalk said that they, they being
18 Mr. Hernandez and Mr. Anyosa, saw the shooter because
19 they argued with him, and that he would promise to
20 you that he would be able to prove his case.

21 well, ladies and gentlemen, right after they
22 finished doing their opening statement, that's where
23 the promise ended, never fulfilled, never completed,
24 never met.

25 It essentially went sour for them, ladies

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1 and gentlemen, and what he told you the credible
2 evidence would show led to one thing, that Josiah
3 Galloway, this slight individual of 5-foot 5, who
4 they keep wanting to give more height and more
5 inches, is not and could not be the man that shot
6 Jorge Anyosa, could not and is not the person that
7 was out there on West Columbia Street at 1:15 or 1:30
8 in the morning on March 15th, 2008.

9 with all the finger pointing and can you
10 identify the person that was in the lineup and can
11 you identify the person, all the pointing that
12 happened, just so that there would always be somebody
13 pointing a finger at this innocent man, with all that
14 finger pointing, the People, through the district
15 attorney, forgot one thing. They forgot the truth.

16 They forgot that this process that I ended
17 with talking about what's up there on the wall is
18 about the truth, and they forgot to bring along with
19 them a certain level of credibility about what they
20 did and how they did it to try and dissuade you that
21 the truth is that Mr. Galloway is not the man. They
22 want you to just turn your head away from that.

23 what they did was bring you a cast of some
24 sixteen witnesses they put up there over two weeks,
25 most of whom had little or nothing to say, on and

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1 off, I was there, I looked around, lights were on.

2 what they failed to meet was their burden

3 on every count. They failed to prove that Josiah

4 Galloway, that gentlemen, is the man who shot Jorge

5 Anyosa, and they failed to do it beyond a reasonable

6 doubt.

7 A reasonable doubt, one of those that really

8 makes you just scratch your head and say, I don't

9 know.

10 MR. SCHALK: Objection, your Honor.

11 THE COURT: Sustained.

12 MR. BREWINGTON: The Judge will tell you

13 what a reasonable doubt is, but I think this case

14 sure makes you scratch your head.

15 The Judge is going to use those terms. He's

16 going to tell you about reasonable doubt. He's going

17 to tell you what the People have to prove, and,

18 throughout this entire case, this table right here,

19 this assistant district attorney, the People, have a

20 responsibility and had the responsibility to prove

21 their case beyond a reasonable doubt.

22 I said to you that this is a serious case,

23 but it's also a frightening case because of the way

24 Mr. Galloway, who committed no crime, could be

25 arrested, allegedly for what appears to be based on

Summation - Defendant

1 what the People put on, a nonsensical reason, and
2 then was held and charged with these crimes, not held
3 for a day, for three days.

4 They picked him up on the 5th, held him
5 until the 6th and then held him until the 7th before
6 any charges happened, had a chance to pick up his
7 girlfriend, stopped her car, pulled her over and held
8 her for four or five hours, and then they just
9 continued to go on.

10 They charged him with crimes that are
11 serious. There is not one point that we have
12 disputed in this case about Mr. Anyosa being shot.
13 He was, apparently, seriously injured, and our
14 prayers and our thoughts go with him. But that
15 doesn't translate into finding any old body or
16 somebody to take the fall, particularly not an
17 innocent person.

18 There's a lot of evidence about Mr. Anyosa's
19 injuries. And the photographs, we didn't even try to
20 dispute that. It's not in dispute.

21 But what is a dispute is that the police
22 knew that this was the wrong person from the
23 beginning and they continued to press on. They
24 pressed on. The district attorney pressed on, and
25 here we are at this, kind of, in-your-throat kind of

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1 gulping moment where we have to make a decision about
2 what they have placed before you.

3 Mind you, Mr. Galloway has no responsibility
4 to prove anything. He doesn't have to prove
5 anything, anything that he says or does. The Judge
6 is going to instruct you what the People have to do.

7 Pressing on though, these folks, the police
8 and the district attorney, gave us a chance to see
9 what I consider to be the underbelly of some police
10 work.

11 I call it that because you sat and you
12 watched as police retracted their prior testimony.
13 Detective Lipson, remember that, who put the photo
14 packs together, not from a description, but to make
15 sure that Josiah Galloway was in the photo packs,
16 that his face was going to be there in an old
17 picture, not how he looked.

18 He did see a composite sketch at the time he
19 put the photo packs together. How do we know that?
20 well, in his testimony a question was asked:

21 At the time you put these photo packs
22 together, you had already seen a composite sketch,
23 right?

24 "ANSWER: Yes.

25 "QUESTION: As a matter of fact, you had a

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1 telephone conversation with someone about that sketch
2 before you put those photo packs together, didn't
3 you?

4 "ANSWER: Yes."

5 And then Detective Lipson also revealed an
6 important fact about this entire case. When he saw
7 Mr. Galloway, he noticed something didn't match,
8 something was different, his hair. This is what the
9 testimony tells you:

10 "QUESTION: Well, sir, you noticed that when
11 you saw his hair, you noticed that it was something
12 different that made him look different, right?

13 "ANSWER: Yes."

14 Then he surprisingly changed his testimony.
15 Remember this? He says:

16 "QUESTION: And you, what you saw that made
17 him look different was the fact that his hair was
18 longer, right?

19 "ANSWER: His hair was actually -- I believe
20 it was called cornrows.

21 "QUESTION: Well, sir, didn't you say at an
22 earlier time that his hair was in an Afro, a big
23 blow-out Afro?

24 "ANSWER: I believe so.

25 "QUESTION: You said that under oath, didn't

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1 you?

2 "ANSWER: Yes, I did.

3 "QUESTION: So now you're changing your
4 testimony that his hair was in cornrows, right?

5 "ANSWER: I was mistaken.

6 "QUESTION: So you are changing your
7 testimony?

8 "ANSWER: Yes, I am."

9 The trained officer was mistaken about what
10 Mr. Galloway allegedly looked like. He had a problem
11 with regard to what he looked like and identity
12 issues, the officer.

13 And he even tried to mislead you by saying,
14 not only that he was mistaken but, when asked when
15 did he realize his mistake, he said a day or two
16 later. Then, when asked if he ever told anyone to
17 correct it, he said no.

18 Ladies and gentlemen, when Detective Lipson
19 gave his testimony he was asked:

20 "QUESTION: When did you see him and his
21 hair was in cornrows, you didn't discuss that
22 difference with any of the other officers, did you?

23 "ANSWER: No.

24 "QUESTION: Did you discuss with them that,
25 based on your observations, his hair didn't match

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1 what was in the photographs?

2 "ANSWER: No.

3 "QUESTION: But you did notice that, right?

4 "ANSWER: Yeah."

5 Then he goes on to talk about that he had
6 the opportunity to take photographs and he chose not
7 to, and that he knew that Mr. Galloway didn't look
8 like the individuals in the photo packs, but he
9 pressed on:

10 "QUESTION: And, sir, you knew at the time
11 that Mr. Galloway was in front of you that the
12 description of the person that was the alleged
13 shooter was that his hair was cut tight to his head,
14 right?

15 "ANSWER: When are you talking about?

16 "QUESTION: The time that you made your way
17 back to the armory.

18 "ANSWER: Yes.

19 "QUESTION: And you noticed that
20 Mr. Galloway's hair was not cut tight to his head,
21 right?

22 "ANSWER: Yes. Well, it was in the cornrows
23 which is tight to his head.

24 "QUESTION: Sir, did you give this
25 testimony:

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1 ""Question: would it be accurate to say
2 that at the time you saw Mr. Galloway, that you knew
3 that his hair was not cut tight to his head?

4 ""Answer: It would be fair to say
5 that?""

6 "Did you give that testimony?

7 "ANSWER: Yes.

8 "QUESTION: So not only did you notice that
9 his hair was in cornrows, you also noticed that it
10 was not consistent with the description, right?

11 "ANSWER: It was tight to his head in
12 cornrows. I was mistaken when I gave that saying it
13 was -- "

14 That's the officer.

15 Ladies and gentlemen, when he was asked this
16 very specific question:

17 "QUESTION: In your prior testimony, you
18 agreed it was not cut tight to his head, right?

19 "ANSWER: Right.

20 "QUESTION: So you are changing your
21 testimony now?

22 "ANSWER: I was mistaken in my prior
23 testimony.

24 "QUESTION: So when you gave sworn testimony
25 before as a witness, that was mistaken, right?

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1 "ANSWER: That part was mistaken.

2 "QUESTION: When did you realize that it was
3 mistaken?

4 "ANSWER: Probably a day or two later."

5 And then he was asked:

6 Did you tell anybody? He said no.

7 The man that conducted the photo packs
8 noticed the obvious difference and he kept going. He
9 kept it to himself, didn't let anybody else that
10 should or might know, know.

11 Then, using that framework, we go to the
12 People's first witness, Mr. Ogletree. Remember him,
13 the gentleman that's doing time for federal drug
14 charges and violation of probation and has multiple,
15 multiple felonies, some violent. The one who they
16 put on the stand to prove their case. A man who said
17 he knows Josiah Galloway and he says that Josiah
18 Galloway, in his words, did not shoot anybody.
19 That's their witness.

20 He was coached and coerced, he said. He
21 told us that -- this is on direct:

22 "QUESTION: You're saying now you were
23 coached and it was coerced?"

24 His answer: Absolutely, sir.

25 Then when he showed him a document.

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1 "QUESTION: You've seen that document
2 before, yes?

3 "ANSWER: Yeah, I seen it for the first
4 time, I believe it was, the other day."

5 He was asked another question:

6 "QUESTION: What did you tell the police on
7 June 5th, 2008?

8 "ANSWER: I told the police multiple
9 statements, but they broke it down to how they wanted
10 to break it down and put it on paper."

11 They put it together. If you remember what
12 he said, he said: I told them a bunch of things and
13 they took pieces of this and pieces of this and tried
14 to put a story together.

15 And the police in this situation, ladies and
16 gentlemen, had Mr. Ogletree and had Mr. Galloway,
17 and, with respect to May 15th, he didn't tell the
18 police anything. He tells the police this:

19 "QUESTION: That wasn't my question. I'm
20 asking you what you told them specifically about a
21 shooting of a cab driver at or near Jackson Street
22 near a chicken place. What did you tell them with
23 respect to that?

24 "ANSWER: I didn't tell them anything."

25 His sworn testimony, the one that they put

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1 on the stand.

2 Then he tells them of a document that they
3 created, that he was, at that time, being charged
4 with false allegations that were dismissed.

5 And he says, in response to this question:

6 "QUESTION: Did you sign this written
7 statement?

8 "ANSWER: I signed the written statement.
9 It's my signature on the bottom.

10 "QUESTION: And you signed it and you read
11 it -- you read over it before you signed it, right?

12 "ANSWER: Uh, no, I don't remember reading
13 over it before I signed it."

14 Then he says, in part of one of his answers
15 that tells the story:

16 They kept me in there. They kept me in
17 there for hours. They threatened me with all kinds
18 of charges, everything. And every charge that they
19 threatened me with and everything they asked me
20 about, how I know Josiah, the shooting that happened
21 with Josiah, when they came looking for him --
22 objection.

23 "ANSWER: All those stories that I gave
24 them, breakfast in the morning, Josiah saying it's
25 hot so he needed to leave for Baltimore, they put

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1 their own story together.

2 They say, You're sure he didn't tell you
3 that he's leaving the next morning because he shot
4 somebody at the chicken spot? They just kept going
5 on and on for hours trying to get me on some chicken
6 spot. And, honestly, Josiah didn't do it. He didn't
7 do that, but I was weak and they coerced me and they
8 got me to sign that paper.

9 That was his testimony. That was their
10 first witness. He also said that the police kept
11 focusing on Josiah Galloway.

12 He was asked the question:

13 "QUESTION: When they spoke to you, did they
14 focus on Josiah Galloway when they spoke with you?

15 "ANSWER: Absolutely. Absolutely."

16 Then we go to Mr. Anyosa, the victim, a man
17 who went through a traumatic experience, a man who
18 the district attorney stood right here and told you
19 that he'll never forget what that person looked like.
20 He was rehearsed. He was prepared, and that's to be
21 expected. I would not anticipate the People putting
22 on anybody who is not prepared and rehearsed, but
23 they couldn't rehearse for all of the
24 cross-examination to come to kind of get to the
25 truth.

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1 When it comes to talking about preparation,
2 he was asked this question:

3 "QUESTION: How many times did you meet with
4 the DA, sir?

5 "ANSWER: Twice.

6 "QUESTION: When was the last time?
7 Yesterday.

8 "QUESTION: And you were shown that
9 document, right?

10 "ANSWER: Yes.

11 "QUESTION: And you were shown the photo
12 array, correct?

13 "ANSWER: Yes.

14 "QUESTION: And you were shown copies of the
15 automobiles?

16 "ANSWER: Yes.

17 "QUESTION: And how long did you meet with
18 the DA yesterday? That was Sunday?

19 "ANSWER: Yes.

20 "QUESTION: How long were you with the DA?

21 "ANSWER: For forty minutes.

22 "QUESTION: And then you met with the DA
23 before then, correct?

24 "ANSWER: Yes.

25 "QUESTION: When?

Summation - Defendant

1 "ANSWER: I think it was last week.

2 "QUESTION: Where was that? Was that here
3 in this building?

4 "ANSWER: Yes.

5 "QUESTION: Where did you meet yesterday?

6 "QUESTION: Where did you meet yesterday, by
7 the way?

8 "ANSWER: In his office."

9 In his office.

10 "QUESTION: Where was that? Here in this
11 building?

12 "ANSWER: Yes.

13 "QUESTION: When you met last week, how long
14 did you meet with the DA?"

15 Not long.

16 "ANSWER: Not long, twenty minutes most.

17 "QUESTION: When you went to the DA's office
18 yesterday and met, did you go through the questions
19 that you were going to be asked you?

20 "ANSWER: Yes."

21 So when I call him a rehearsed witness, he
22 knew the questions and he knew the answers. They had
23 gone through it before.

24 But this is what they couldn't prepare for:

25 "QUESTION: And you told them the person the

Summation - Defendant

1 person was between five-ten and five-eleven, right?

2 "ANSWER: That was correct."

3 They couldn't rehearse him for:

4 "QUESTION: And you know the difference
5 between close hair and braids, don't you?

6 "ANSWER: Yes, sir.

7 "QUESTION: You know the difference between
8 close hair and cornrows braids, don't you?

9 "ANSWER: Yes, sir.

10 "QUESTION: Isn't it true that the person
11 that shot you didn't have cornrows?

12 "ANSWER: Excuse me? What was the question?

13 "QUESTION: Sure. The person that shot you,
14 that person's hair was short to the head, right?

15 "ANSWER: Short, yes.

16 "QUESTION: It wasn't cornrows, was it?

17 "ANSWER: No, no cornrows.

18 "QUESTION: It wasn't a big Afro, was it?

19 "ANSWER: No.

20 "QUESTION: And the person that shot you
21 wasn't 5-foot 5 inches tall, was he?

22 "ANSWER: It was five -- five-eleven.

23 "QUESTION: Sir, let me ask you, you are
24 how tall?

25 "ANSWER: Five-ten.

Summation - Defendant

1 "QUESTION: And the person that shot you,
2 you argued with him, didn't you?

3 "ANSWER: Yes.

4 "QUESTION: As a matter of fact, you slapped
5 his hand when he went like this, as you indicated,
6 right?

7 "ANSWER: Yes.

8 "QUESTION: And said, Get the fuck out of
9 here, right?

10 "ANSWER: Yes, I say that.

11 "QUESTION: You cursed at him and smacked
12 his hand, didn't you?

13 "ANSWER: Yeah, because it was pointed at
14 me.

15 "QUESTION: Sir, did you do that?

16 "ANSWER: Yes, sir.

17 "QUESTION: When you did that and you
18 smacked his hand, you were close enough, within arm's
19 reach of him, and you could see his height, couldn't
20 you?

21 "ANSWER: Yes.

22 "QUESTION: And you know that his height at
23 that time was five-ten or five-eleven, right?

24 "ANSWER: That's what I said.

25 "QUESTION: which was approximately your

Summation - Defendant

1 height or a little taller, right?

2 "ANSWER: Yes, sir."

3 That's what they couldn't prepare him for --
4 and they couldn't prepare him to take away the fact
5 that he knew that the person that shot him had some
6 form of accent, and he testified about that:

7 "QUESTION: Well, sir, you also told the
8 police that this person who shot you had an accent,
9 right? Didn't you tell the police that?

10 "ANSWER: I'd say it was accent, yeah.

11 "QUESTION: Yes, and, sir, the accent that
12 this person had, what type of accent was it, do you
13 recall?

14 "ANSWER: I don't know what to say.

15 "QUESTION: Sir, when you reported that this
16 person had an accent, that was when they came to
17 speak to you in the hospital, right?

18 "ANSWER: I think I said that."

19 So it was still fresh on his mind that the
20 person had an accent, that the person was 5-foot,
21 five-eleven, that the person had hair like mine.

22 By the way, make sure my hair grew through
23 the two and a half weeks we were together.

24 They couldn't prepare him for that. They
25 also couldn't prepare him for the fact that this

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1 gentlemen said, in response to this question:

2 And, sir, the person that you say shot you
3 was 25 years of age to 30 years of age, right?

4 "ANSWER: That's what I said."

5 The age of this person that shot him doesn't
6 match either. Josiah Galloway was 21 at the time.

7 With regard to the car, they tried --
8 remember I said during my opening that you will see
9 that they try to get the car to morph, to change from
10 a Toyota Corolla, as they first explained it, that
11 was a particular color, to something that was, maybe,
12 light green or a different form of a car.

13 This is what Mr. Anyosa says when he gave
14 this first description:

15 "QUESTION: Sir, you indicated that the car
16 that you described was dark gray; is that right?

17 "ANSWER: That's what I said.

18 "QUESTION: What's that?

19 "ANSWER: I say gray, gray, dark."

20 His testimony.

21 And then he talk about the Toyota and the
22 tinted windows. Remember the testimony of Dluginski,
23 as well as the witness, about the windows being
24 tinted, on a scale of eight -- scale of one to ten,
25 being an eight in terms of being dark.

Summation - Defendant

1 And then he says that he was standing face
2 to face with this individual and he saw this
3 individual repeatedly say these words:

4 "QUESTION: Did you hear the person
5 speaking, correct?

6 "ANSWER: Only the word fuck you. That's
7 all I heard.

8 "QUESTION: I'm sorry?

9 "ANSWER: It's only the words fuck you."

10 Well, ladies and gentlemen, if Josiah
11 Galloway was there saying F you over and over again,
12 fa, fa, fa, fa, fa, his teeth are going to show, no
13 question about it. You just can't say fuck you. You
14 can't do it. Teeth are going to show. You would
15 have seen his missing front tooth that he's had since
16 he was a youngster.

17 That's why we brought the dentist in, so
18 they couldn't turn around and say we don't know when
19 he lost his tooth. You would have seen it. It would
20 have been obvious.

21 Why is that important? Because we asked --
22 I asked Mr. Anyosa, you were pretty much face to
23 face, eye to eye with this individual? You could see
24 his face clearly? And he said yes.

25 And if this person was go fa, fa, fa, he

Summation - Defendant

1 would have seen it, and he probably did see the
2 person go fa, fa, fa, using the F word, but it wasn't
3 that man.

4 You even saw the air -- heard the air
5 escaping from his mouth with the microphone because
6 of his tooth.

7 That would have been something -- when they
8 put it on this little form that says was there
9 anything distinguishable about the individual, his
10 answer was, nothing distinguishable. It says it
11 right here, any oddities, none noticed, People's 18
12 in evidence.

13 He was face to face and we asked him
14 questions:

15 "QUESTION: You were face to face?

16 "ANSWER: Face to face.

17 "QUESTION: Kind of like the way we are face
18 to face, my nose is lined up with your nose?

19 "ANSWER: Yes.

20 "QUESTION: My eyes being lined up with your
21 eyes?

22 "ANSWER: Yes.

23 "QUESTION: My mouth pointing towards you?

24 "ANSWER: Yes.

25 "QUESTION: When you slapped his hand, you

Summation - Defendant

1 were, essentially, an arm's length away, like I am
2 with the assistant district attorney; is that
3 correct?

4 "ANSWER: That's correct.

5 "QUESTION: When you were face to face with
6 him, right?

7 "ANSWER: Correct.

8 "QUESTION: So when you slapped his hand,
9 what was it that you told him?

10 "ANSWER: Do not point the finger to my
11 head.

12 "QUESTION: So didn't you actually say these
13 words, Get the fuck out of here?

14 "ANSWER: I say that.

15 "QUESTION: When you did that, sir, this
16 person's eyes lined up with yours. You are basically
17 the same height, right?

18 "ANSWER: Same height."

19 There is no question that Mr. Anyosa and
20 Mr. Hernandez both said that the individual that shot
21 Mr. Anyosa had short hair. There's no equivocation
22 about that.

23 when he was asked, when you did that, sir,
24 the person that you saw, same type of hairstyle?

25 "ANSWER: It was the same person.

Summation - Defendant

1 "QUESTION: With the short hair, right.

2 "ANSWER: Yes, it was short.

3 "QUESTION: Yes?

4 "ANSWER: Short hair."

5 He continued to say that it was short hair.

6 He did not pick cornrows as one of the options
7 available to him when the sketch artist came to him.
8 That's important.

9 "QUESTION: Now, when the officer was
10 showing you hairstyles -- because you did see
11 different types of hairstyles?

12 "ANSWER: Yes.

13 "QUESTION: One of the choices that was
14 available to you was cornrows, right?

15 "ANSWER: Sure.

16 "QUESTION: And you didn't pick cornrows,
17 did you?

18 "ANSWER: No.

19 "QUESTION: Because the person that shot you
20 didn't have cornrows, right?

21 "ANSWER: Right.

22 "QUESTION: Am I correct?

23 "ANSWER: Yes.

24 "QUESTION: And the person that shot you
25 didn't have an Afro, right?

Summation - Defendant

1 "ANSWER: No.

2 "QUESTION: The person that shot you had
3 hair that was cut short to the head, either very
4 short or less than a half an inch, right?

5 "ANSWER: I would say an inch, little more
6 maybe.

7 "QUESTION: And when you were asked on the
8 18th -- excuse me -- on the 19th, about any oddities
9 in their face, you were asked that, weren't you?

10 "ANSWER: Excuse me?

11 "QUESTION: Anything distinguishing about
12 the person's face?

13 "ANSWER: Right.

14 "QUESTION: And you said there were none
15 that were noticed, correct?

16 "ANSWER: Yes."

17 He never saw Josiah Galloway on that day,
18 ladies and gentlemen, because Josiah Galloway wasn't
19 there.

20 One of the things that turns out to be very
21 interesting in this case is that, even though when
22 they picked Josiah Galloway up on June 5th, they knew
23 that Josiah Galloway had braids and that his hair was
24 not cut short to his head.

25 I have put up on the easel, Judge, the blow

Summation - Defendant

1 up of Mr. Galloway that was taken on June 5th.

2 They knew that Mr. Galloway had these
3 cornrows in his head. Clearly, you can see his
4 scalp. Clearly, you can see the design, even though
5 this is a grainy picture taken from the picture that
6 was given to us that the police took. They knew what
7 his hair looked like.

8 When asked this question about this
9 photograph or ever seeing a photograph of
10 Mr. Galloway with braids, Mr. Anyosa had this to say:

11 "QUESTION: Now, sir, have you ever been
12 shown a photograph of Mr. Galloway with braids?

13 "ANSWER: No.

14 "QUESTION: Every photograph that was shown
15 to you of Mr. Galloway from the date that this
16 incident happened all the way up until today, wasn't
17 it with him with short hair, right?

18 "ANSWER: Yes.

19 "QUESTION: Or a baseball cap on, right?

20 "ANSWER: Baseball cap, yes.

21 "QUESTION: But never with his braids,
22 right?

23 "ANSWER: Nope."

24 That's what the eye witness says, the one
25 that is the victim in this situation. That's what he

Summation - Defendant

1 says. And, ladies and gentlemen, he didn't
2 equivocate about any of that. He was very clear that
3 that's what happened, that he had never seen this.

4 And he made it very clear that the person
5 that they were showing him and that we showed him
6 here in the courtroom, we said, Sir, you ever seen
7 that photograph before?

8 "ANSWER: No, sir. First time I've seen it.

9 "QUESTION: Anybody in the DA's office or
10 police ever tell you that Mr. Galloway had braids?

11 "ANSWER: No.

12 "QUESTION: And, sir, that photograph that's
13 there, you recognize it as being -- those as being
14 braids, cornrows, don't you?

15 "ANSWER: Yes.

16 "QUESTION: It is, right?

17 "ANSWER: Yes.

18 "QUESTION: Would it be accurate to say
19 that, with regard to that photograph, the hair on the
20 individual doesn't match the individual that shot
21 you, right?

22 "ANSWER: Just the hair.

23 "QUESTION: The hair is different, right?

24 "ANSWER: Yes.

25 "QUESTION: The hair is completely

Summation - Defendant

1 different, right?

2 "ANSWER: Yes."

3 why is that important? why all this time
4 about hair and height? Because Mr. Anyosa was told
5 by the police not to pay attention to the hair.

6 His testimony:

7 "QUESTION: That means you couldn't see the
8 hair of any of them, right?

9 "ANSWER: Yes. They told me not to see the
10 hair.

11 "QUESTION: They told you not to look at the
12 hair, right? That's what they told you?

13 "ANSWER: Just look at the face."

14 Then we have Mr. Hernandez. He spoke about
15 a Toyota from day one.

16 He said, in response to the question, And
17 wouldn't it be accurate to say that back on the 15th
18 of May, that being the morning of the incident, that
19 you gave a description of a car being a Toyota
20 four-door sedan, right?

21 "ANSWER: Yes."

22 And he also gave a description of the person
23 being 26 or 30. That's in his testimony.

24 And he also gave a description of the person
25 being five-ten. That's in his testimony.

Summation - Defendant

1 And then, when we asked him about the hair,
2 he says:

3 "QUESTION: And this person had hair that
4 was short to his head, right?

5 "ANSWER: It was short at that moment.

6 "QUESTION: It was short at that moment?

7 "ANSWER: It was short hair."

8 We asked him again about that and asked him
9 particularly about braids and cornrows. This is
10 Mr. Hernandez, the young man that was there earlier
11 before Mr. Anyosa was shot:

12 "QUESTION: You know what cornrows braids
13 are, don't you, sir? You've seen braids, haven't
14 you?

15 "ANSWER: Braids, yes.

16 "QUESTION: And there's a difference between
17 braids and someone with short hair close to the head,
18 isn't there?

19 "ANSWER: Yes.

20 "QUESTION: Describe for the jury what's the
21 difference?

22 "ANSWER: Short hair just -- just -- it's
23 short hair."

24 Braided hair. It's got like braids.

25 Not quite sure.

Summation - Defendant

1 "QUESTION: The person that you had the
2 argument with, his hair was shorter than mine?

3 "ANSWER: No. It was about -- it was about
4 your type.

5 "QUESTION: Like mine?

6 "ANSWER: Yeah."

7 I asked him about the teeth:

8 "QUESTION: When you say not very much, did
9 you notice anything unusual about their teeth?

10 "ANSWER: No."

11 That's important because he says that he was
12 able to see the person's mouth. We asked him a
13 question:

14 "QUESTION: And you were able to see not
15 only his hair, right?

16 "ANSWER: Yes.

17 "QUESTION: But you could also see his
18 mouth, right?

19 "ANSWER: Pretty much."

20 I found it interesting that he had no memory
21 of Mr. Anyosa slapping whoever had shot him's hand
22 down and saying get the F out of here.

23 But one of the things that was pretty clear,
24 when we asked him questions specifically about braids
25 and no Afro, Mr. Hernandez verified, verified that it

Summation - Defendant

1 wasn't Mr. Galloway.

2 MR. SCHALK: Objection, your Honor.

3 THE COURT: Conclusion of the jury.

4 MR. BREWINGTON: If they had braids, you
5 would have noticed that, right?

6 "ANSWER: Yes.

7 "QUESTION: And this person that was in
8 front of you for the two minutes didn't have braids,
9 right?

10 "ANSWER: No.

11 "QUESTION: And the person that you were
12 arguing with for two minutes, did that person have an
13 Afro, that being about three, about four or
14 five inches big?

15 "ANSWER: No.

16 "QUESTION: And if they did, you would have
17 noticed that too, right?

18 "ANSWER: I could have noticed it.

19 "QUESTION: I am not asking you what you
20 could have. You would have, right?

21 "ANSWER: Yes."

22 And he was never shown a picture of
23 Mr. Galloway with braids. We asked him that too:

24 "QUESTION: Sir, ever shown any photographs
25 of Mr. Galloway in braids?

Summation - Defendant

1 "ANSWER: No.

2 "QUESTION: I would ask you to take a look
3 at Defendant's D for identification --

4 And, Judge, up here on the board I have D1,
5 on the board. That's the big blow up.

6 "QUESTION: I would ask you to take a look
7 at Defendant's D for identification. Anybody ever
8 show you that photograph before, sir?

9 "ANSWER: No.

10 "QUESTION: The hair -- the hair that's on
11 that person in that photograph, that's not the same
12 type of hair as the person that you had the argument
13 with, is it?

14 "ANSWER: No.

15 "QUESTION: It's different, right?

16 "ANSWER: The hair is different.

17 "QUESTION: The hair is different because
18 the hair is braids, right?

19 "ANSWER: Yes.

20 "QUESTION: And you know the difference
21 between what's depicted in that photograph and short
22 hair, or short hair like mine, right?

23 "ANSWER: Yes.

24 "QUESTION: And if the person that you had
25 the argument with had braids, you would have told the

Summation - Defendant

1 police that, right?

2 "ANSWER: Yes.

3 "QUESTION: But he didn't, did he?

4 "ANSWER: He didn't have any braids. I
5 don't remember any braids.

6 "QUESTION: The person you were having the
7 argument with, missing any teeth?

8 "ANSWER: I don't remember.

9 "QUESTION: well, sir, the person that you
10 were very close to, they cursed at you, correct?

11 "ANSWER: Yes.

12 "QUESTION: Argued with you, correct?

13 "ANSWER: Yes.

14 "QUESTION: And you were able to see them as
15 they were that close?

16 "ANSWER: Yes.

17 "QUESTION: And as you sit here now, you
18 have no memory of any missing teeth, do you?

19 "ANSWER: I don't remember."

20 Ladies and gentlemen, those are the eye
21 witnesses. The Judge is going to give you a charge
22 about identification and eye witnesses or the law on
23 that.

24 I believe that they -- those gentlemen,
25 about what they said about Mr. Galloway, I truly

Summation - Defendant

1 believe they have no malice, but they are mistaken.
2 They are sadly and badly mistaken about the identity
3 of the person that they have been, in our view,
4 assisting to try and identify.

5 When we look at what the police and what the
6 officers did in this case, I think it's important for
7 you, ladies and gentlemen, to consider that, in this
8 case, some of the statements of the officers stretch
9 their credibility.

10 Credibility becomes important in this case
11 because it's really coming down to them saying
12 believe us, believe what we say, and don't believe
13 that Mr. Galloway wasn't there that night.

14 MR. SCHALK: Objection, your Honor.

15 THE COURT: Overruled.

16 MR. BREWINGTON: Police Officer Horowitz,
17 the gentleman who said that he wanted to be a
18 detective, do you remember him?

19 "QUESTION: The photograph of Josiah
20 Galloway that was taken on June 5th, at the time that
21 you went and did the photo arrays, which was also on
22 June 5th, you knew that Josiah Galloway looked --
23 what he looked like on that day, didn't you?

24 "ANSWER: Yes, I did.

25 "QUESTION: And you knew that he had

Summation - Defendant

1 cornrows, right?

2 "ANSWER: Yes.

3 "QUESTION: And you also knew that not only
4 did he have cornrows, but that he was there in the
5 armory if you wanted to take a picture of him, right?

6 "ANSWER: Yes."

7 Then we go on with Officer Horowitz from the
8 Hempstead Police Department:

9 "QUESTION: And the reason I asked you --
10 withdrawn.

11 When you showed the photo array, you showed
12 the photograph of Mr. Galloway not as he appeared on
13 June 5th, right?

14 "ANSWER: Correct.

15 "QUESTION: You showed a photograph of how
16 he appeared two years earlier, right?

17 "ANSWER: I don't think it was quite that
18 long."

19 Obviously he knew.

20 "QUESTION: Well, sir, it was over a year
21 earlier, wasn't it?

22 "ANSWER: Yes, it was.

23 "QUESTION: As a matter of fact, you showed
24 a photograph that had him in short hair, right, in
25 the array?

Summation - Defendant

1 "ANSWER: Yes.

2 "QUESTION: Not in braids, right?

3 "ANSWER: Correct."

4 And then we asked him, Officer Horowitz:

5 "QUESTION: How long does it take for

6 someone to grow from an inch or an inch and a half,

7 or even two inches, maybe like my length --

8 "ANSWER: I don't know.

9 "QUESTION: -- to five inches high?

10 "ANSWER: I don't know."

11 Detective Horowitz was asked other

12 questions. Talk about credibility now, credibility

13 of the officers that get up there, say anything, try

14 and convince you of anything just because they say

15 who they are. This is the question:

16 "QUESTION: Officer, how tall am I?"

17 About five-ten, five-eight. Five-eight to

18 five-ten, approximation.

19 "QUESTION: If I'm five-eight to five-ten,

20 you're saying Mr. Galloway is my height?

21 "ANSWER: I believe so."

22 Judge, I'm going to ask the Court's

23 permission, may I ask Mr. Galloway stand for a

24 second?

25 THE COURT: Okay.

Summation - Defendant

1 MR. BREWINGTON: Stand up tall, sir.

2 The officer was making me five-eight,
3 five-eleven. On the college roster, I was 6-foot,
4 Judge, but, even so, down by four or five inches,
5 easy. The officer wanted you to believe Mr. Galloway
6 was my height. That's what they were doing.

7 Then we asked Officer Horowitz:

8 You learned that the car had a missing hub
9 cap on the left front tire?

10 "ANSWER: I remember that the car had a
11 missing hub cap. I don't know which it was, left or
12 right."

13 All of a sudden their credibility becomes a
14 real question in this case because someone is
15 questioning them, someone is pushing them, someone is
16 saying let's search for the truth because, when you
17 have this man sitting in the armory, no one was
18 interested in finding the truth.

19 well, let's deal with credibility a little
20 bit more because -- remember the carrying detective,
21 the one that's responsible for this case, Dluginski?
22 He said he could tell it was a small sedan, on direct
23 examination.

24 Remember, we brought him up here, and he
25 says there's a small sedan going past here, like

Summation - Defendant

1 nobody was going to pay attention to that, so that
2 you would think there was a small car, this person
3 was shot from a small car, maybe it was the Mazda,
4 maybe it was the Honda.

5 Do you remember when we had him on
6 cross-examination. We got him right from there right
7 back over there. If I could have gotten him there
8 any faster, I would have.

9 "QUESTION: Where is the small sedan?

10 "ANSWER: Right here."

11 This is what he's telling you.

12 "QUESTION: You say the small sedan, based
13 on what fact? Withdrawn. What's the make of that
14 car?

15 "ANSWER: I couldn't tell you the make of
16 the car.

17 "QUESTION: How many doors does it have?

18 "ANSWER: I don't know.

19 "QUESTION: How far does the car extend back
20 outside the frame of the picture?

21 "ANSWER: It doesn't.

22 "QUESTION: Well, no, on the outside of the
23 frame of the picture?

24 "ANSWER: I thought you meant coming on --
25 in and out of the frame itself.

Summation - Defendant

1 "QUESTION: That's not the whole car there,
2 is it?

3 "ANSWER: No.

4 "QUESTION: And, sir, is it a foreign or
5 domestic make?

6 "ANSWER: I don't know.

7 "QUESTION: Tire size, do you know?

8 "ANSWER: No.

9 "QUESTION: Luxury size car, do you know?

10 "ANSWER: No.

11 "QUESTION: So you don't know if it's a
12 small sedan, do you?

13 "ANSWER: I'm --

14 "QUESTION: Sir, do you know whether it's a
15 small sedan, yes or no?

16 "ANSWER: No."

17 Why would he just get up and start to say
18 it's a small sedan? Just to try to make it
19 convenient, to make it fit? This is a young man's
20 future we are dealing with here.

21 MR. SCHALK: Objection.

22 THE COURT: Overruled.

23 MR. BREWINGTON: And they want to make it
24 fit.

25 Then we had this discussion with

Summation - Defendant

1 Detective Dluginski, that he spoke to Detective Ross
2 about Mr. Galloway's hair and, of course,
3 Detective Ross says, no, that never happened.
4 Detective Dluginski talks about the shaded windows
5 and the height being five-ten, five-eleven, short
6 hair, the description the hair was like mine, and
7 claims that nothing is missing from the video.

8 Do you remember People's 20 in evidence?
9 They put the DVD in that we eventually got him up
10 there to look at.

11 Again, credibility is important, because we
12 asked him, sir -- and that was after we talked to
13 Mr. Carroll, the video expert, the guy with the radio
14 voice. We asked him:

15 Sir, you said on direct examination there
16 was nothing missing from that. How do you know that?

17 Well, I remember.

18 You remember from when?

19 He remembered from seeing it back in May,
20 15th, 2008, for about ten minutes, and had never seen
21 it since. He could tell you, swear to you, that
22 there was nothing missing.

23 Ladies and gentlemen, it's not our argument
24 there's anything there that would hurt the defense at
25 all. As a matter of fact, we wish it were as clear

Summation - Defendant

1 as a bell. But why would they make statements to you
2 that they can't confirm, particularly when they have
3 hired an expert to come in here and say there's
4 probably some stuff missing and we can't tell you
5 what is missing and what's not.

6 He was straight forward, reasonable, a nice
7 gentlemen. I thought he did decent work, considering
8 they couldn't figure out how to make the tape work.

9 But why would Detective Dluginski do that?
10 why stretch his credibility?

11 Ladies and gentlemen, Detective Lipson, I
12 talked about before, but one of the things I just
13 want to be clear about with him, the fact that he had
14 memory lapses just shows you that memory in this
15 situation, identification, is subject for real, real
16 question.

17 He's a trained person. He's trained to
18 remember details, and he couldn't remember
19 Mr. Galloway's hair. You expect the witnesses to
20 come in here and say, oh, yeah, that's the person?

21 Then we have Detective Ross. Do you
22 remember Detective Ross? He's the gentleman that did
23 People's Exhibit 30. That's this lineup with the six
24 people with the baseball caps on. We asked him a
25 question very specifically. We said:

Summation - Defendant

1 "QUESTION: Didn't you tell the jury that
2 the reason why the August 5th lineup didn't take
3 place was because the hair was different from the
4 arrest photo?"

5 Pointing to D1, Judge.

6 This was his answer:

7 "ANSWER: Yes, the lineup didn't go forward
8 because his hair was out."

9 His scalp was breathing, like it is here in
10 H1. That's his hair, three, four, five inches of
11 hair.

12 We asked him this question:

13 And then, on the 14th, his hair was like it
14 was in the arrest photo, right?

15 "ANSWER: Close -- yes.

16 "QUESTION: And then you put a hat on his
17 head anyhow, right?

18 "ANSWER: Correct.

19 "QUESTION: And you wouldn't allow him to
20 have his hair in cornrows the way it was in the
21 arrest photo. You made that decision, right?

22 "ANSWER: Correct."

23 They took his hair away from him. I said
24 that to you before and I asked the detective that
25 question. And it's relevant because the very things

Summation - Defendant

1 that would allow him to be able to set himself free
2 and prove his innocence, they took from him
3 purposely, not unwittingly, but purposely.

4 That's the thing that really made me loose
5 sleep these past four days, because the more I
6 thought of it and the more I read, and that's when I
7 took the time and found this stuff for you, ladies
8 and gentlemen, it smacks of an innocent man being
9 falsely accused.

10 Detective Ross:

11 "QUESTION: Sir, the hair under the hats,
12 People's 33, the hair under the hats, that being
13 under Mr. Galloway's hat, what was the condition of
14 the hair underneath the hat, braided, not braided?

15 "ANSWER: Braided.

16 "QUESTION: Like in cornrows as you
17 mentioned?

18 "ANSWER: Yes.

19 "QUESTION: Is it true, sir, that if the
20 hair under the hat was in cornrows, you might not
21 have used the hat?"

22 This is where we start dealing with
23 credibility for real.

24 "QUESTION: What do you mean --"

25 Excuse me.

BB

Summation - Defendant

1 "ANSWER: What do you mean if it's true?

2 "QUESTION: Yeah.

3 "ANSWER: He would have been the only person
4 that had cornrows.

5 "QUESTION: And you're not sure if you would
6 have used the hat, right?

7 "ANSWER: No, I would have used the hat.

8 "QUESTION: Did you give this testimony,
9 page 244 of the prior proceeding starting at line
10 six. "

11 And this is what I read to him.

12 ""Question: Sir, did you ever see him
13 with short hair?

14 ""Answer: I saw him. I saw an arrest
15 photo of him.

16 ""Question: And the arrest photo was
17 from what year?

18 ""Answer: This year.

19 ""Question: And the arrest photo
20 showed cornrows, didn't it?

21 ""Answer: Correct.

22 ""Question: And you're calling that
23 short hair?

24 ""Answer: Correct.

25 ""Question: That's your interpretation

Summation - Defendant

1 of short hair?

2 ""Answer: Yes.

3 ""Question: Just so we are clear, the
4 description that you got when you are setting up the
5 lineup was for short hair, not cornrows, correct?

6 ""Answer: Correct.

7 ""Question: So if Mr. Galloway had
8 cornrows, you wouldn't have used hats?

9 ""Answer: I don't know if I would have
10 used hats or not."

11 His statement about Mr. Galloway and why he
12 used hats makes absolutely no sense. It really makes
13 no sense.

14 Then he is asked more specific questions,
15 because he made this statement about Mr. Galloway
16 coming in on the 14th with his hair in an Afro like
17 it's here in H1, and that Mr. Galloway -- and he
18 forgot that we remembered he had said that he was
19 handcuffed -- but that Mr. Galloway took care of the
20 hair himself.

21 "QUESTION: How long does it take to put
22 somebody's hair in cornrows? Please tell the jury.

23 "ANSWER: I don't know, Counsel.

24 "QUESTION: Sir, are you saying that this
25 man braided his own hair in the precinct, braided?

Summation - Defendant

1 withdrawn.

2 "Are you saying that this gentleman, on the
3 14th, braided his own hair?"

4 He sat up there and said yes.

5 "QUESTION: And put it in cornrows?"

6 That's the question: Put it in cornrows?
7 He said correct.

8 And I asked him this question: Isn't he
9 handcuffed to the bench?

10 Answer -- this is the response: He's
11 secured in an arrest room and can't get out.

12 He didn't answer about the handcuffs right
13 then.

14 "QUESTION: Sir, that's not my question. My
15 question was, was he handcuffed to a bench, yes or
16 no?"

17 His first answer.

18 "ANSWER: Part of the day, yes.

19 "QUESTION: How many hands does it take to
20 cornrow somebody's hair, sir, much less your own?

21 "ANSWER: I don't have cornrows. I don't
22 know.

23 "QUESTION: So you don't know, do you?

24 "ANSWER: No.

25 "QUESTION: When you said that he cornrowed

Summation - Defendant

1 is own hair, you lied, didn't you?

2 "ANSWER: No, I did not.

3 "QUESTION: Sir, you never saw him cornrow
4 his hair, did you?

5 "ANSWER: Yes, I did.

6 "QUESTION: With which hand?

7 "ANSWER: I don't know, both. I don't know.

8 "QUESTION: Did he have his hand like this,
9 down to the bench?"

10 Do you remember me going through this trying
11 to figure it out?

12 How did he do it? Tell the jury how he did
13 it?

14 This was his testimony, the detective: He
15 was uncuffed in the arrest room and he put his hair
16 into cornrows.

17 We went on. I just couldn't leave it alone.

18 "QUESTION: Now, with regard to your claim
19 that this individual, that being Mr. Galloway,
20 cornrowed his own hair, is it your sworn testimony
21 that you watched him do it?

22 "ANSWER: I saw him doing it, not the entire
23 time. I was busy the entire day.

24 "QUESTION: How much did he do? Show the
25 jury what actions he took to put his hair in

Summation - Defendant

1 cornrows.

2 "ANSWER: I don't know how he does it. I
3 don't know how to do it.

4 "QUESTION: Do you know -- withdrawn.

5 "QUESTION: I know you don't know how to do
6 it because you've never seen it done. My question to
7 you is, tell the jury how you swear that you saw the
8 man putting -- this man putting cornrows in his hair,
9 what did he do to manipulate his hair?

10 "ANSWER: I don't know."

11 Then we had to press him a little further.
12 Do you remember me asking him the question -- I had
13 to ask him: How did he do himself in cornrows? How
14 did he part his hair?

15 And that's why we had the young lady, his
16 girlfriend, Amanda come and tell you what the deal
17 was.

18 How you get from H1 to N? How you get from
19 H1 to N? What's the process?

20 You got to take a comb and pull back the
21 hair, part it, push it down, bobbie pins or something
22 else, take grease, grease the scalp, and use grease
23 on your hands and get a good grip on the hair,
24 otherwise, it ain't happening.

25 "QUESTION: I'm not asking exact time. Can

Summation - Defendant

1 you tell the jury, approximately, was it an hour, two
2 hours?"

3 This is Detective Ross.

4 "ANSWER: A little bit. I don't know. I
5 don't know. I am not giving you time. I don't
6 know."

7 He wouldn't answer my question.
8 Credibility.

9 "QUESTION: He was a person that was in --
10 he was in your station house, right?

11 "ANSWER: Correct.

12 "QUESTION: And you were the one in charge
13 of the lineup, right?

14 "ANSWER: Yes.

15 "QUESTION: And, sir, the cornrows that he
16 eventually -- you say that he had and you put the hat
17 on him, what did the back of the hair look like?"

18 And I asked a question. The back of the
19 hair, remember we talked about that with Amanda, the
20 hair is short in the back and how difficult it is.

21 I asked him what the back of the hair looked
22 like and he says: What do you mean the back of the
23 hair? What cornrows look like. I don't know how you
24 want me to describe that.

25 "QUESTION: My question is, you saw the back

Summation - Defendant

1 of his head?

2 "ANSWER: During the lineup, no.

3 "QUESTION: At any time, sir, during the
4 lineup?

5 "ANSWER: Yeah, during the day, of course, I
6 saw his whole body during the day."

7 These are the last series of questions that
8 I am going to read to you today from Detective Ross:

9 "QUESTION: So he was able to cornrow the
10 front of his head and also do the back of his head
11 sufficiently so that the cornrows were in place,
12 right?

13 "ANSWER: They were on his head. Whether
14 they were in place or not, I don't know, Counselor.

15 "QUESTION: Did he have the use of a mirror?

16 "ANSWER: No.

17 "QUESTION: Did he have the use of any hair
18 grease?

19 "ANSWER: No hair grease, no.

20 "QUESTION: Did he have the use of a comb?

21 "ANSWER: Nope.

22 "QUESTION: How did he part his hair, sir,
23 do you know?

24 "ANSWER: No, I don't.

25 "QUESTION: Sir, it's your sworn testimony

Summation - Defendant

1 that this man was able to part his hair and cornrow
2 his hair and he cornrowed his hair without a comb or
3 Dixie Peach, or whatever the grease is that would be
4 utilized for the scalp to -- to grab hold?

5 "ANSWER: He had no grease, no.

6 "QUESTION: And he had no comb, correct?

7 "ANSWER: Correct.

8 "QUESTION: Still standing by that story?

9 "ANSWER: Yeah."

10 I don't think they expected anybody to ask
11 them any questions, never put them to the test. But
12 when we take a look at what they have done in this
13 case, it raises all types of questions, because not
14 only did Detective Lipson say he was mistaken, but
15 every one of the officers that came up there and
16 tried to convince you that it was other than
17 something that it is, had a little variation on their
18 own theme.

19 Detective Bischoff, the guy that did the
20 composite sketch that ended up on this intelligence
21 bulletin and also ended up on People's 18, the other
22 composite sketch, do you remember him?

23 well, we just kept asking, what's that word
24 that's there, that initially the individual, that
25 being Mr. Anyosa, described the person as shaven and

Summation - Defendant

1 then later on said he had a little bit more hair.

2 He did say that it was a dark gray Toyota --
3 that's right here on Defendant's C in evidence -- and
4 that the person was five-ten to five-eleven, 25 to
5 30, and that his face was shaven and that his hair
6 was shaven. That's the first thing that was said.
7 Then it grew to a little bit more hair.

8 what is perplexing is that in this situation
9 they had information coming to you about a car, that
10 being a Honda Civic, who nobody can tell you about
11 the front left hub cap, that being the driver's side
12 hub cap. Do you remember that? That's Defendant's
13 A. Nobody could tell you about the front hub cap.

14 They make sure they have a picture of the
15 front driver's side hub cap of the Mazda, but not of
16 the Honda, and they knew part of the description said
17 that the hub cap was missing.

18 How did they know? Because in their own
19 paperwork it says that. It says right in the
20 bulletin: witnesses describe the subject vehicle as
21 possibly a 1998, 1999, Toyota Camry or Corolla, gray
22 or silver with very dark tinted windows missing the
23 front driver's side hub cap.

24 This bulletin went out on 5/20, May 20th,
25 2008. It's right here. what are they looking for?

Summation - Defendant

1 They are looking for a 25- to 30-year-old individual,
2 five -- 150 to 160 pounds -- 145 pounds soaking wet
3 -- but 5 feet 10 inches tall, medium complexion,
4 short, black hair, and spoke with an accent. That's
5 what the police knew was the description.

6 Now, what they did in this situation was try
7 and do everything that they could to try and make you
8 believe that what Mr. Galloway's hair looked like --
9 and we were very fortunate to be able to find a
10 photograph from April, April of 2008. Those
11 photographs are in as N, O, and P. I've got that up
12 on the easel, because Amanda was proud of her work
13 and she can place it in time because it dealt with an
14 event going on in their life. That's important.

15 This is what his hair looked like. You
16 can't mistake that. We were able to bring to you
17 something that they couldn't carry their burden on.
18 we brought you what his hair looked like. They
19 haven't disputed that. They just keep saying don't
20 believe it, don't believe it, don't believe it.

21 They probably anticipated -- they mentioned,
22 well, he had glasses on today. He looks different.
23 The man goes out at night, he couldn't hit a barn
24 with a shotgun.

25 Picture of him at night in the spring of

Summation - Defendant

1 2008, with his braids, with his earring, which they
2 tried to say, well, how do you know that's his head
3 in N, O, and P, with his glasses on.

4 No mention of glasses by any witness.

5 Matter of fact, the witness said the person was 15 to
6 20 feet from them shooting at them.

7 Not without his glasses. Why? Look at him.

8 He was with her and his mother, that being
9 Amanda Mariana, that being Mrs. Johnson, Cheryl
10 Johnson, and Rayford -- we brought him here. You saw
11 he lives and breathes. He's not a made up person --
12 watching television.

13 When tested about their memories, I'll just
14 say I was amazed that they had their memories intact.
15 But it doesn't really bring to much question because
16 it's important. It would be important to remember
17 every scintilla and every fact when you know that an
18 innocent man is being accused. That's what they did.

19 Ladies and gentlemen, Detective Ross said
20 something which was very troubling, and I think it
21 raises real questions for this case, for Josiah
22 Galloway, because I asked him about this photograph,
23 number 33.

24 Do you remember I put it up here? I made it
25 as big as I could. I blew it up and then I said:

Summation - Defendant

1 How tall is number one? I don't know. What's the
2 facial features on number two? I don't know. How
3 tall is number six? Doesn't he look like a muscle --
4 a body builder? I don't know. Well, sir, wasn't it
5 your job to find people that had the
6 characteristics -- were these people standing or
7 sitting? They were all sitting. And you made
8 Mr. Galloway sit on phone books? Yeah, I made him
9 sit on phone books. And you took away his hair,
10 right?

11 And by the way, number six -- remember that
12 I went through this up to number six -- I pointed and
13 I said: Number six, what type of facial features
14 does number six have? He says, Oh, well, I think he
15 has a mustache.

16 I had to ask him: Are you swearing to this
17 jury that you can see a mustache on this? Looks like
18 a thumb print.

19 Take a look at that and then ask about the
20 credibility of these officers. What harm would it be
21 for him to just say you can't see number six's face,
22 it's a bad photograph? But they said that just
23 because they were trying to make sure that they knew
24 that they were the police and he's the defendant.

25 There's shame going on here, but it's not on

Summation - Defendant

1 his seat. Innocence rains right here. Innocence
2 rains in this place.

3 You heard from Amanda and you heard from
4 Miss Johnson that they know what their loved one was
5 doing. They came in here. They were truthful. They
6 were forthright. They didn't equivocate and, more
7 important, they withstood any level of
8 cross-examination.

9 And then, what made it outrageous, what made
10 it outrageous, was that they started to ask
11 Miss Johnson: You didn't tell anybody about this,
12 did you? You didn't go to the police? You didn't do
13 this, did you?

14 Tell you what, if I could have jumped out of
15 my chair, I would have at that point because that's
16 outrageous, because they knew. That's why I put Joe
17 LaRocca, the DA on this case, right on that stand as
18 quickly as I could.

19 why? So I could say: You knew about this.
20 You're a law enforcement person. What did you do to
21 contact these people? Did you call the house? Did
22 you do anything? No. Did anybody impede you? No
23 one impeded us at all. We just didn't do it.

24 The man is sitting in jail. They knew there
25 were alibi witnesses given to them on paper, and they

Summation - Defendant

1 said rot. Then they had the audacity to try and make
2 her and her into a liar? They should be ashamed of
3 themselves.

4 Ladies and gentlemen, in this situation,
5 what they did in this situation, is consistent with
6 what they have done in this entire case, just treat
7 it just like another guy, just going to be another
8 number.

9 He is not a statistic. He is a human being
10 who is getting up going for job interviews every
11 morning, looking for a job. He made a mistake -- you
12 heard about it -- two years ago or three years ago.
13 He admitted to it. He drove a car a few times
14 without a license. He admitted to it. He stood up
15 in court, didn't have to take the stand, but he did.
16 Why? To say I did not do that.

17 There is a very important thing going on
18 here today, ladies and gentlemen. When I did my
19 opening, I started pointing to this wall and I looked
20 around at the presidents and I remembered a quote by
21 a person by the name of Daniel Defoe. I read this
22 earlier in the weekend so I had it running around my
23 mind.

24 The quote is: I hear much of people's
25 calling out to punish the guilty, but very few are

Summation - Defendant

1 concerned to clear the innocent.

2 That, that is what we saw evidenced by the
3 actions of the police in this case in their attempts
4 to just try and make Josiah Galloway fit.

5 In Old England they would say: It is better
6 to let a guilty man go free than to send a single
7 innocent man to prison.

8 I paraphrase on that: It is better, ladies
9 and gentlemen, to evaluate the facts in this case and
10 know that an innocent man must go free.

11 That's what this case is about. He was
12 misidentified and mistaken, not because he was even
13 near the scene, but because officers came to his
14 house and started saying things. Oh, we got all
15 these other charges. We are going to do this. We
16 are going to pick you up.

17 And then they charged, according to them,
18 Mr. Galloway with this crime of shooting a taxi cab
19 driver after what? His looks, because he looks like
20 a composite sketch?

21 Ladies and gentlemen, do you remember what I
22 asked Detective Ross? Did you take any care to make
23 sure that they even looked like Mr. Galloway? He
24 said, Nope, just looking for black men.

25 MR. SCHALK: Objection, your Honor.

Summation - Defendant

1 MR. BREWINGTON: His testimony.

2 THE COURT: It's up to the jury.

3 MR. BREWINGTON: His testimony. Then I made
4 a crack -- I won't repeat what I said.

5 He had no concern about their heights, their
6 weight, facial features, hair, anything. Just needed
7 fillers. You didn't hear him testify that they
8 rejected any fillers. The cops came in. I asked him
9 about Mr. Bellamy who he said he knew for a long time
10 on the force, a man over 45 years old. Six foot, I
11 asked him. He said about that.

12 Ladies and gentlemen, when I take my seat,
13 that will be the last time I have a chance to speak
14 to you. I'll ask you to remember the testimony of
15 Cheryl Johnson and the testimony of Amanda Mariana
16 and also the testimony of ADA Joe LaRocca.

17 I put him in the same category as these two
18 women, because when he came in here, he marched right
19 up to that chair and I posed questions to him and he
20 told the truth.

21 He said: No, no one stopped us from ever
22 contacting those witnesses. We just didn't do it.
23 He didn't try to lie or manipulate. He just told the
24 truth.

25 But there wasn't a lot of that going on in

Summation - Defendant

1 here and that, ladies and gentlemen, is the crime.

2 That is the crime.

3 So I asked you -- he came in here innocent.
4 I asked you questions during voir dire, if he was
5 innocent, I asked you -- I told you during openings
6 that he started out innocent and I anticipate he will
7 end up innocent.

8 Let him stay that way. Tell the People that
9 he's not guilty. He wasn't there. He was at home.
10 He doesn't match the description. You haven't proved
11 your case. So long. Sayonara. Put this level of
12 shame to rest. Send Mr. Galloway home to Amanda.
13 Send him home to his mom and let him go back to work.
14 He's innocent.

15 THE COURT: Ladies and gentlemen, please
16 take about five minutes. Do not talk about the case.
17 It's critically important that you don't talk about
18 the case.

19 (Whereupon, the jury exited the courtroom.)

20 THE CLERK: Recalling case on trial, People
21 against Josiah Galloway.

22 Let the record reflect the defendant is
23 present, the attorneys are present, and the jury is
24 on their way.

25 COURT OFFICER: Jury entering.